UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/586,206	01/11/2008	Venkatraj Venkatrao Narayanan	F2044(C)	4777

201 7590 09/03/2009

UNILEVER PATENT GROUP
800 SYLVAN AVENUE
AG West S. Wing
ENGLEWOOD CLIFFS, NJ 07632-3100

EXAMINER	
MEHTA, HONG T	
ART UNIT	PAPER NUMBER
1794	

NOTIFICATION DATE	DELIVERY MODE
09/03/2009	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentgroupus@unilever.com

Office Action Summary	Application No.	Applicant(s)	
	10/586,206	NARAYANAN ET AL.	
	Examiner	Art Unit	
	HONG MEHTA	1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *13 July 2006*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-20* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-20* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *October 24, 2006*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

This office action is in response to application 10/586,206 filed on July 13, 2006. Pending claims 1-20 are under examination. Claim 1 is independent claim.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 17 and 18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. Claims 17 and 18 recites the limitation "one or more amino acids" in claim 17, line 2 and claim 18, line 2. There is insufficient antecedent basis for this limitation in the claims.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. **Claims 1-4, 7-9, 11-13, 19 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Ganesan et al. (WO 01/70038 A2)**.

3. **Regarding claim 1, 2, 7, 8, 13, 19 and 20** Ganesan et al. discloses a process for manufacturing black leaf tea that is infusible in hot or cold water (Abstract). Ganesan et al. discloses contacting black tea with ascorbic acid or their salts (pg. 5, lines 20-25; pg. 7, lines 5-14) and oxidative agent, hydrogen peroxide (pg. 6, lines 11-20) in aqueous solution (pg. 6, lines 3-7) and drying tea product that is water infusible at temperature ranges of 5°C to 100°C (pg. 6, lines 25-35).

4. **Regarding claim 3 and 4**, Ganesan et al. discloses ascorbic acid and it salts as solubilising compound (pg. 5, lines 20-25) in the amount range of 0.5% to 10% by weight of tea (pg. 6, lines 4-7).

5. **Regarding claim 9 and 11**, Ganesan et al. discloses the addition of oxidative agents (pg. 6, lines 11-14) along with the ascorbic acids and at 10°C to 60°C (pg.6, lines 9-10).

6. **Regarding claim 12**, Ganesan et al. discloses tea can dried with a moisture content of less than 5% (pg. 6, lines 21-22).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which

> said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

8. The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

9. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

10. Claims 5, 6 and 10 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Ganesan et al. (WO 01/70038 A2).

11. **Regarding claim 5 and 6**, Ganesan et al. discloses oxidative agents, hydrogen peroxide at concentration ranging from 0.01% to 1% by weight of black tea (pg. 6, lines 16-20).

12. **Regarding claim 10**, Ganesan et al. discloses 10 minutes to 3 hours fermented incubation period (pg. 6, lines 9-10).

13. **With respects to claims 5, 6 and 10**, Ganesan et al. and the claims differ in that amount of oxidative agent's percentages and incubation time does not teach the exact same proportions as the recited in the instant claims.

14. The claims are anticipated for the claimed ranges that overlap the amounts taught in the prior art. However for the claimed ranges that do not overlap, one of ordinary skill in the art at the time the invention was made would have considered the invention to have been obvious because the compositional proportions taught by Ganesan et al. overlap the instantly claimed proportions and therefore are considered to establish a prima facie case of obviousness (see MPEP 2144.05.) It would have been obvious to one ordinary skill in the art to select any portion of the disclosed ranges including the instantly claimed ranges from the ranges disclosed in the prior art reference, particularly in view of the fact that "The normal desire of scientists or artisans to improve upon what is already generally known provides the motivation to determine where in a disclosed set of percentage ranges is the optimum combination of percentages", *In re Peterson* 65 USPQ2d 1379 (CAFC 2003).

15. **Claims 14, 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over by Ganesan et al. (WO 01/70038 A2) as applied to claim 1 above, and further in view of (JP 47-049719 Abstract).**

16. Ganesan et al. discloses the claimed invention as discussed above.

17. **Regarding claim 14, 17 and 18**, Ganesan does not disclose contacting amino acid with the black tea prior to drying. However, JP 47-049719 discloses amino acid including phenylalanine to tea prior to heating process (Abstract). It would have been obvious to one of ordinary skill in the art to employ the amino acids additive of JP 47-049719 into Ganesan's tea product. The addition of JP 47-049719's amino acids, phenylalaine improves on the natural tea flavor without imparting bitter after taste. It would have been obvious to one of ordinary skill in the art to combine JP 47-049719's amino acids into Ganesan's tea product contributing to overall quality flavor of tea beverage.

18. **Claims 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over by Ganesan et al. (WO 01/70038 A2) as applied to claim 1 above, and further in view of (JP 47-049719 Abstract) and Maena et al. (JP 02-128669)**.

19. Ganesan et al. discloses the claimed invention as discussed above.

20. Regarding claim 15 and 16, Ganesan does not disclose contacting amino acid with the black tea prior to drying. However, JP 47-049719 discloses amino acid including phenylalanine to tea prior to heating process (Abstract), furthermore Maena et al. discloses amino acid in the amount of 0.1% to 60.0%

wt. in final product (Abstract). It would have been obvious to one of ordinary skill in the art to employ the amino acids additive of JP 47-049719 and Maena et al.'s amino acid's amount range into Ganesan's tea product to improve flavor without bitter after taste. It would have been obvious to one of ordinary skill in the art to combine JP 47-04919 and Maena et al. in Ganesan's tea product contributing to the overall quality flavor of tea beverage composition without bitterness.

Conclusion

21. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to HONG MEHTA whose telephone number is (571)270-7093. The examiner can normally be reached on Monday thru Thursday, from 7:30 am to 4:30 pm EST..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jennifer McNeil can be reached on 571-272-1540. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Mark Ruthkosky/
Supervisory Patent Examiner, Art Unit 1794

Htm